

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**EDWARD BRANSTAD and  
MONROE "MONTY" BRANSTAD  
Winnebago County, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2007-AQ-07

TO: Edward Branstad  
R.R. 2 Box 116  
Forest City, Iowa 50436

Monroe "Monty" Branstad  
3018 Highway 69  
Forest City, Iowa 50436

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Edward Branstad for the purpose of resolving air quality. This consent order resolves issues raised in the appeal of Administrative Order No. 2006-AQ-08; 2006-SW-04, issued on February 23, 2006. In the interest of avoiding litigation, the parties have agreed to the provisions below.

**II. JURISDICTION**

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Edward Branstad is the owner of a farm property located south of Leland, Iowa, in the SW ¼ of Section 1, T98N, R24W, Forest Township, Winnebago County, Iowa (hereinafter "Branstad Farm"). At all times relevant to this order, Monroe "Monty" Branstad was the operator of the Branstad Farm. The local address of the property is 39091 Highway 69, Leland, Iowa. The Iowa Corporation known as Branstad Brothers

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LLC has its principal office at 39091 Highway 69, Leland, Iowa, and Jordan Branstad is the manager of that company.

2. On July 26, 2004, open burning occurred at the Branstad Farm located at 39091 Highway 69, Leland, Iowa, in violation of the prohibitions against open burning and open dumping contained in 567 IAC 23.2 and 100.4.

2004 Incident

3. On July 27, 2004, DNR Field Office 2 received a complaint that open burning occurred at the Branstad Farm located at 39091 Highway 69, Leland, Iowa, on July 26, 2004. The complainant stated that a large explosion occurred on July 26, 2004, at 9:47 pm. The complainant observed a large fire with lots of black smoke. The complainant and another observer contacted the Winnebago County Sheriff to investigate. The sheriff informed Field Office 2 that Monroe "Monty" Branstad had reported that he would be conducting a "controlled burn."

4. On July 30, 2004, Carl Berg and Cindy Garza of DNR Field Office 2 visited the Branstad Farm to investigate the complaint. The DNR personnel observed a burn pit containing the remains of a 55-gallon drum, pieces of metal, household trash, tin cans, a spray can, plastic, a tire rim, and wire beading from a burned tire. Since the most recent burn had occurred, more trash and a wooden pallet had been added to the burn pit.

5. At the site on July 30, 2004, Monroe "Monty" Branstad informed DNR personnel that his sons had been burning in their trash pit. Monroe "Monty" Branstad stated that he does not live at the site, but his sons live there. Jordan Branstad is one of the sons of Monroe "Monty" Branstad. Monroe "Monty" Branstad also stated at this time that most of what was burned was wood.

6. A Notice of Violation letter dated August 3, 2004, was sent to Monroe "Monty" Branstad, citing the July 26, 2004, open burning violations.

2003 incident

7. At least one member of the Branstad family has been made aware of the prohibitions against open burning and open dumping repeatedly prior to the 2004 open burning incident. On August 7, 2003, DNR Field Office 2 received a complaint that open burning occurred at the Branstad Farm on August 6, 2003. The complainant stated that a large explosion occurred followed by heavy black smoke for 45-50 minutes. At the request of the complainant, the Winnebago County Sheriff visited the Branstad Farm and was informed that the open burn was a "controlled burn."

8. On August 8, 2003, Carl Berg and Jeff Vansteenburgh of DNR Field Office 2 visited the Branstad Farm to investigate the complaint. The DNR personnel observed a

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shallow burn pit in the ground northeast of the main building. The pit contained the remains of a recent fire. The majority of the residue in the pit was wire. The pit also contained the remnants of a feed bunk, some household refuse, and the shell of a water heater.

9. At the site on August 8, 2003, Monroe "Monty" Branstad informed the DNR personnel that he had removed a fence and had burned the wooden fence posts along with an old feed bunk. Monroe "Monty" Branstad also stated that the fire had been started and tended by his son, who periodically lives at the site. The DNR personnel at the site informed Monroe "Monty" Branstad that there is a prohibition against open burning, with few exceptions. A copy of DNR's open burning and waste disposal rules was left with Monroe "Monty" Branstad.

10. A Notice of Violation letter dated August 27, 2003, was sent to Monroe "Monty" Branstad, citing the August 6, 2003, open burning violations.

Incidents Prior to 2003

11. Prior to the 2003 incident, Monroe "Monty" Branstad was cited by DNR for other open burning and improper waste disposal violations. Administrative Order No. 89-AQ-28, which included a penalty, was issued to Monroe "Monty" Branstad on September 19, 1989, for open burning and improper waste disposal which occurred at the Branstad farm on August 7, 1989. DNR personnel investigated on August 8, 1989, and a Notice of Violation letter dated August 9, 1989, was sent to Monroe "Monty" Branstad.

12. Open burning also occurred at the Branstad Farm on April 28, 1987. DNR Field Office 2 personnel investigated a complaint on May 4, 1987, and a May 14, 1987, Notice of Violation letter was sent to Monroe "Monty" Branstad. Finally, on April 21, 1989, Clay Swanson of DNR Field Office 2 visited the property and discussed the open burning and open dumping rules with Monroe "Monty" Branstad.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trades wastes is specifically prohibited. The above facts demonstrate violations of this provision.

3. On two occasions, Monroe "Monty" Branstad has claimed that the open burning occurring at the Branstad Farm was a "controlled burn." According to the

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provisions of 567 IAC 23.2(3)(“g”)(2), the controlled burn of a demolished building may be conducted by a city following written notification to DNR. Further, the burning of rubber tires, trade waste, garbage, rubbish, and other non-structural materials is specifically prohibited by the provisions of 567 IAC 23.2(3)(“g”)(2). The burning which occurred at the Branstad Farm in 2003 and 2004 did not constitute “controlled burns.”

4. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-121.

5. 567 IAC 100.4 prohibits a private or public agency dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Edward Branstad and Monroe “Monty” Branstad agree to do the following:

1. Within 60 days of the date this order is signed by the director, remove and properly dispose of all solid waste located at the above-mentioned site; and
2. Pay a penalty of \$4,500.00 within 30 days of the date this order is signed by the director.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$4,500.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to

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this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Edward Branstad and Monroe “Monty” Branstad have achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Edward Branstad and Monroe “Monty” Branstad have a duty to remain knowledgeable of the DNR’s requirements and to be alert to the probability that his conduct is subject to DNR’s rules. Therefore, \$2,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Edward Branstad and Monroe “Monty” Branstad. For that reason, Edward Branstad and Monroe “Monty” Branstad waives their rights to appeal this order or any part thereof.

## VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section “V. Order” of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section “IV. Conclusions of Law” of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section “IV. Conclusions of Law” of this administrative consent order but which may arise from the facts summarized in Section “III. Statement of Facts” of this administrative consent

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order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
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Richard A. Leopold, DIRECTOR  
Iowa Department of Natural Resources

Dated this 16 day of  
March, 2007.

\_\_\_\_\_  
Edward Branstad

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

  
\_\_\_\_\_  
Monroe "Monty" Branstad

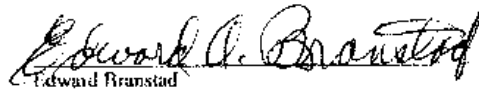
Dated this 5 day of  
March, 2007.

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order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

Richard A. Leopold, DIRECTOR  
Iowa Department of Natural Resources

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

  
Edward Branstad

Dated this 7 day of  
March, 2007.

Monroe "Monty" Branstad

Dated this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.